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IN THE

Supreme Court of the United States

October Term, 1945.

No. 405

CHARLES SWANSON,
Petitioner,

v.

MARRA BROTHERS, INC.,
Respondent.

Brief in Opposition to Petition for Writ of Certiorari.

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ARGUMENT.

A Stevedore Injured While Working on a Pier Is Only Entitled to Compensation Under the State Workmen's Compensation Act and Has No Remedy Against His Employer Under the Jones Act.

It has been well established for years by decisions of your Honorable Court that when a stevedore or longshoreman is injured while working on a pier, his recovery is under the local state workmen's compensation act.

This very question was decided in *State Industrial Commission of the State of New York v. Nordenholt Corporation*, 259 U. S. 263 (1922). In that case the plaintiff's son died from injuries which he received as a longshoreman while working on the pier in the unloading of a vessel which was lying in navigable waters. This Court held that the New York Compensation Act was applicable.

The rule enunciated in the *Nordenholt* case was subsequently reaffirmed in *T. Smith & Son, Inc. v. Taylor*, 276 U. S. 179 (1928). In each case, the decedent longshoreman was injured while working on a pier, but in the *Smith* case, the longshoreman was knocked into the water where he was later found dead. In the *Smith* case the plaintiff-in-error attempted to distinguish the *Nordenholt* case (which clearly was controlling) on the ground that in the *Nordenholt* case the death occurred on land while in the *Smith* case it occurred in the water. However, this distinction was not adopted by your Honorable Court which held that the plaintiff's remedy was exclusively under the Louisiana Workmen's Compensation Act.

The rulings in the *Nordenholt* and *Smith* cases state what has always been the accepted understanding of the law. This principle has been uniformally applied by trial and appellate courts without exception and has been reaffirmed on numerous occasions by your Honorable Court.

In *Noguicira v. New York, New Haven & Hartford R. Co.*, 281 U. S. 128 (1930), this Court said on page 133:

> "In *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263, a longshoreman was injured on a dock while engaged in unloading a vessel. It was decided that in such a case, where the injury took place on an extension of the land, the maritime law did not prescribe the liability and the local law had always governed. The Workmen's Compensation Law of the State was accordingly held to be applicable. The distinction was thus maintained between injuries on land and those which were suffered by persons engaged in maritime employment on a vessel in navigable waters."

In *South Chicago Coal and Dock Co. v. Bassett*, 309 U. S. 251 (1940), this Court recently stated the following pertinent proposition as settled law:

> ". . . We had held that one engaged as a stevedore in loading a ship lying in port in navigable waters was performing a maritime service and that the rights and liabilities of the parties were matters within the admiralty jurisdiction. *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52. But the Court had also held that in the case of a longshoreman who was injured on the land, although engaged in unloading a vessel, the local law governed and hence the workmen's compensation law of the State applied. *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263. *The distinction had thus been maintained between injuries on land and those suffered by persons engaged in maritime employment on a vessel in navigable waters.*" (pp. 255, 256.) (Italics ours.)

See also *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647, 648 (1935), and *The Admiral Peoples*, 295 U. S. 649, 651 (1935), in which the *Nordenholt* and *Smith* cases were again cited with approval.

Thus the District Court properly granted the respondent's Motion to Dismiss, for, as Judge Bard said in his opinion in this case, after having discussed the *Nordenholt* and *Smith* cases:

> "These decisions would appear to be directly applicable to and controlling of the case at bar." (R. 11.)

Although this Court in *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943), has recently held that a seaman, when injured on a pier, may sue the shipowner under the Jones Act, (Act of June 5, 1920, c. 250, § 33, 41 Stat. 1007; 46 U. S. C. A. § 688) that decision has not changed the rights and remedies of a longshoreman as enunciated in the *Nordenholt* and *Smith* cases.

It was never the intention of Congress to accord to longshoremen any rights under the Jones Act, and especially, to longshoremen *injured on a pier*.[1] The petitioner errs in interpreting the case of *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926), to hold that a longshoreman is a "seaman" within the meaning of the Jones Act, and from that premise to argue that, like the seaman in *O'Donnell v. Great Lakes Dredge & Dock Co.*, *supra*, a longshoreman may maintain an action under the

[1] The lower court cases cited by petitioner as authority to the contrary are not in point. In two of them the stevedore was permitted to recover against the vessel or its owner—*The Canada*, 7 Fed. 119 (1881) (lien against the vessel for wages) and *Sieracki v. Seas Shipping Co.*, 149 F. (2) 98 (C. C. A. 3rd, 1945) (damages from the shipowner for breach of warranty of seaworthiness). These cases are both irrelevant to the issue in the instant case which concerns solely the liability of the stevedore's employer and not the vessel or its owner. The third case—*McCahan Sugar Refining Co. v. Stoffel*, 41 F. (2d) 651 (C. C. A. 3rd, 1930)—involves an injury to a longshoreman *when on a vessel*. The accident in that case occurred prior to the enactment of the Longshoremen's and Harbor Workers' Act, and the court merely followed the ruling in the *Haverty* case, which is hereinafter fully analyzed on pages 4 to 6, both as to the reason for the decision and the extent thereof.

Although Judge Benedict stated in *The Circassian*, 1 Ben. 209 (1867), that the work done by stevedores was once performed by members of the crew, that was many years ago. Times have changed, and the reason for any rule ceases when the conditions which gave rise to it originally have been dissipated by the changes necessitated by our modern industrial progress. Today stevedores are landworkers, employed by local concerns, and do not share any of the risks or vicissitudes of seamen. Barbers once rendered medical services, but no one today would say that barbers would be included in any statutory group designated as "physicians".

Jones Act, even though his injuries were sustained on a pier.

The circumstances leading to the amendments to Section 24 of the Judicial Code in 1917 (Act of October 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3)) and in 1922 (Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3)), the passage of the Jones Act in 1920, and the enactment of the Longshoremen's and Harbor Workers' Compensation Act in 1927 (Act of March 4, 1927, c. 509; 33 U. S. C. A. § 901 et seq.), as well as the cases construing these statutes, all show that the Jones Act was never intended to apply to longshoremen.

Stevedores and longshoremen, whether injured on a vessel or on a pier, had first received compensation for injuries exclusively through the workmen's compensation statute of the state where employed. In 1917 this Court held that only Congress could legislate concerning rights of stevedores injured on navigable waters and that such injuries were not within the jurisdiction of the state compensation acts. *Southern Pacific Co. v. Jensen*, 244 U. S. 205 (1917). Congress then amended its statute relating to admiralty and maritime jurisdiction by adding a clause referring to rights and remedies under the workmen's compensation law of any state. Act of Oct. 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3). This amendment was declared unconstitutional in *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149 (1920). The statute was again amended with a different wording. Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3). This Court again in 1924 declared this subsequent amendment unconstitutional. *State of Washington v. Dawson & Co.*, 264 U. S. 219 (1924); *Industrial Accident Commission v. James-Rolph Co.*, 264 U. S. 219 (1924).

Thus from 1917, a longshoreman who was injured on a vessel did not have the benefit of any compensation statute (which remedy was applicable if injured on a pier) nor did he have the benefit of any statute which would deprive his

employer in a suit at law of the defense of contributory negligence and assumption of risk, although in 1920 Congress had granted to seamen such additional rights under the Jones Act.

Under these circumstances, this Court, feeling that a stevedore *injured on a vessel* should generally have as much protection as a seaman injured on a vessel, adopted in 1926 an artificial definition of a "seaman" by including in that classification *a stevedore injured when working on a vessel*, and by such "judicial legislation" permitted such a stevedore to recover under the Jones Act for an injury sustained on the vessel. *International Stevedoring Co. v. Haverty*, 272 U. S. 50 (1926).

Not only was the *Haverty* case criticized as contrary to the intent of Congress[2] but in the following year, less than six months after that decision, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act under which a system of compensation was established for stevedores injured while working on navigable waters and which, by its very terms, was integrated with local state workmen's compensation acts by providing in section three that it was limited to cases where recovery through workmen's compensation proceedings could "not validly be provided by State law" 33 U. S. C. A. § 903. Thus, stevedores had finally achieved a system of compensation—irrespective of negligence—for injuries received on navigable waters as well as on land. Since that time a stevedore who is injured on navigable waters has been given compensation exclusively under the Longshoremen's and Harbor Workers' Act, *Nogueira v. New York, New Haven & Hartford R. R. Co.*, 281 U. S. 128 (1930); while a stevedore who is injured on the pier is limited to recovery under the state workmen's compensation act. *Johnston v. Marshall*, 128 F. (2d) 13 (C. C. A. 9th, 1942), cert. den. 317 U. S. 629 (1942).

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[2] (1926) 26 Columbia L. Rev. 211. Robinson, *Admiralty* (1939) 320; Robinson *The Seaman in American Admiralty Law* (1936) 16 Boston Univ. L. Rev. 283 at 308.

It is significant that Congress failed to include seamen in the Longshoremen's and Harbor Workers' Act, for that would have been the natural thing to do if Mr. Justice Holmes had been correct in his statement in the *Haverty* case that Congress intended to include stevedores in the classification of seamen in the Jones Act.[3] Such was the opinion of Judge Coleman in *Obrecht-Lynch Corporation v. Clark*, 30 F. (2d) 144, 146, 147 (D. C. Md. 1929). See also *Robinson on Admiralty*, page 320.

Thus it is evident that Congress never intended to include stevedores within the classification of "seamen" when it enacted the Jones Act and that the law as enunciated in the *Nordenholt* and *Smith* cases is still applicable.

Petitioner argues that since the accident in the *Nordenholt* case occurred in 1918, two years before the Jones Act, that case is not controlling. The petitioner, however, fails to consider that, as we have hereinbefore set forth, this Court has many times *since the enactment of the Jones Act* cited the *Nordenholt* case not only with approval but also as authority for the proposition that stevedores injured on the pier are compensated under the applicable state workmen's compensation act.

While the petitioner admits that the objection raised as to the *Nordenholt* case is not applicable to the case of *T. Smith & Son, Inc. v. Taylor, supra*, which was decided subsequent to the enactment of the Jones Act, his argument that the *Smith* case is inapplicable is summarized in these words:

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[3] The Merchant Marine Act of 1920, (Act of June 5, 1920, c. 250; 46 U. S. C. A. §§ 13, 597, 599, 688, 802-806, 808, 812-813, 861-889, 911, 921-927, 941, 951-954, 991, 974-975, 981-984), of which the Jones Act is Section 33, expressly refers to both stevedores and seamen. In Section 30 of the Merchant Marine Act of 1920 stevedores are twice mentioned in express terms with reference to liens. Act of June 5, 1920, c. 250, § 30, 41 Stat. 1002, 1004; 46 U. S. C. A. §§ 924, 954. Congress would undoubtedly have mentioned stevedores specifically in Section 33 if it had intended to include them under the Jones Act. This interpretation is further substantiated by a later report of the Judiciary Committee of the Senate in connection with legislation concerning stevedores and state compensation statutes, which report was presented by the late Senator Borah under date of June 6, 1921, and designated Report No. 94, 67th Congress, First Session.

"It may be that the Court could and should have considered the effect of the Jones Act, but it is amply clear that it did not do so." (Petitioner's brief, pp. 31-32.)

The record in the *Smith* case shows exactly the contrary to be the case and that this Court at that time undoubtedly considered at length the effect of the Jones Act, even though the opinion made no specific reference to the statute. When the *Smith* case was argued before your Honorable Court, not only the plaintiff-in-error[1] but also the defendant-in-

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[1] Under "Grounds for Invoking this Court's Jurisdiction," the plaintiff-in-error stated on page 3 of its brief:

"The Court below further erred in not finding that the principles applicable to a recovery for a maritime injury are limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St., Section 8337a), which statute is exclusive of all State statutes upon the same subject matter, and therefore further erred in taking jurisdiction *rationae materiae* of a suit in which no maritime relief is asked."

Under "Cases in Support of this Court's Jurisdiction," the plaintiff-in-error stated on page 6 of its brief as follows:

"Principles applicable to a recovery for a maritime injury must be limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St., Section 8337a).

Messel v. Foundation Co., Adv. Sheets, Supreme Court Reporter, July 1, 1927, p. 695.

A stevedore is a seaman within the meaning of Act of March 4, 1915, c. 153, St. 1185, as amended by Sec. 33 of Act of June 5, 1920, c. 250, 40 St. 1007 (Comp.) St. An. Supp. 1923, p. 8337a.

International Stevedoring Co. v. Haverty, Adv. Sheets, Supreme Court Reporter, Nov. 1, 1926, p. 19.

The Act of June 5, 1920, supra, is exclusive of all State statutes upon the same subject matter.

Panama R. Co. v. Johnson, 264 U. S., 375."

In its Specifications of Error, the plaintiff-in-error made the following statement on page 10 of its brief:

"4th. The Court below erred in not holding that the right of action, if any, in this case is governed by the maritime law, including the Act of March 4, 1915, Section 20, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007 (Comp. Stat., Par. (8337a), and that such act is exclusive of all State laws upon the same subject matter."

While in its argument, the plaintiff-in-error on page 13 of its brief conceded that a stevedore injured upon the land is limited to recovery under the state compensation law (which, we submit, is a correct statement of the law), the plaintiff-in-error did make the following statement in the summation of the ten points of its argument on page 38:

"10th. Any claims that defendant in error might have, therefore, must be confined within the principles applicable to a maritime injury, including

error argued the applicability of the Jones Act. In fact, it seems to us from the record in that case that much of the defense of the stevedore company (which undoubtedly would have been able to prove that it was not negligent, if sued under the Jones Act) and the foundation of its argument to this Court was to the effect that the plaintiff's remedy, if any, was confined to the Jones Act and not to the Louisiana Workmen's Compensation Act. The *Smith* case, therefore, is controlling in this case, notwithstanding the petitioner's attempt to demonstrate otherwise.

Finally, this Court in *O'Donnell v. Great Lakes Dredge & Dock Co.*, supra at page 43, not only specifically stated that said decision was not to be interpreted as extending the rights under the Jones Act to longshoremen but also cited those authorities to which we have already averted as an indication that, if and when such a question might be presented, this Court would be bound by its previous decisions in the *Nordenholt* and *Smith* cases.

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the applicable section of the Federal Employer's Liability Act, incorporated in maritime law by Act of June 5, 1920, *Section 33* (*Comp. St., Sec. 8337a*) and the Court below erred in assuming jurisdiction at all of this suit brought solely under the Louisiana Compensation Law, and doubly erred in rendering judgment under the unconstitutional provisions of that law."

In the "Summary of the Argument," the defendant-in-error stated the following proposition on pages 6 and 7 of her brief:

"4. The 'Jones Act,' Section 20 of Act of Congress of March 4, 1915, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007, is not applicable to the case at bar as said Act *applies only to seamen and stevedores engaged on a ship.*

International Stevedoring Co. v. Haverty, 272 U. S. 50 (Decided Oct. 18, 1926)."

(Italics are those of defendant-in-error.)

The defendant-in-error in answering the plaintiff-in-error's Fifth Assignment of Error (in which it was contended that the Jones Act was applicable and exclusive of state statutes) made the following argument on page 23 of her brief:

"The 'Jones Act' is entitled, 'An Act to promote the welfare of American Seamen in the Merchant Marine of the United States. . . . In the case of *International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 Supreme Court Reporter, 19*, decided Oct. 18, 1926, the plaintiff, a longshoreman, was injured upon a vessel while *engaged in stowing freight in the hold*. In the cited case, this court held that in said statute the word 'seamen' is to be taken to include stevedores '*engaged as the plaintiff was.*' In the case at bar, the Defendant in Error's husband was not engaged as the plaintiff was in the *Haverty* case, but was engaged solely on the wharf. Therefore, we submit, that, the 'Jones Act' has no application to the case at bar, and the Defendant in Error would have no right to make the election permitted by said Act". (Italics are those of defendant-in-error.)

CONCLUSION.

We, therefore, submit that the petitioner's effort to distinguish the *Nordenholt* and *Smith* cases and to have the petitioner held a seaman under the *Haverty* case is without legal justification. The courts below properly sustained the respondent's Motion to Dismiss (R. 9, 16). To rule otherwise, after stevedores had achieved a uniform system of recovery under workmen's compensation laws (the state compensation act, if injured on land; the Longshoremen's and Harbor Workers' Act, if injured on navigable waters) would result to the disadvantage of stevedores in general, for then the question of what, if anything, a stevedore could recover would depend *in reality* on the place where the injury occurs. Under petitioner's contention, the stevedore if injured on a vessel would always obtain a recovery under the Longshoremen's and Harbor Workers' Act, but if injured on a pier, he could not recover unless he proved that his employer was negligent. Thus the system of compensation which has been established and in force during the past eighteen years would be destroyed. This system of compensation is a sound one; and there is no reason in principle why this system should be destroyed.

Counsel has observed the trend of decisions extending to seamen, when possible, the benefits of social legislation. However, in situations like this case stevedores would not be benefited if it were to be decided that the Jones Act was applicable when they are injured on a pier. The result would be exactly the opposite. Stevedores already have the benefit of state workmen's compensation statutes—social legislation enacted for their benefit—whereby recovery is predicated on the injury occurring in the course of employment and not on negligence. The petitioner has an adequate remedy for his injury since, as set forth in respondent's Motion to Dismiss, he has already been receiving compensation under The Pennsylvania Workmen's Compensation Act. Act of June 21, 1939, P. L. 520; 77 P. S. § 1 et seq. (R. 5-9). Economically and socially it would be a step backward if

this system, so successful through the past decades, were to be destroyed, for then a stevedore, when injured on the pier, would be required to prove negligence before his employer could be held liable.

Neither Congress nor this Court ever intended a longshoreman when injured on a pier to recover damages under the Jones Act. The longshoreman, when so injured, is accorded exclusive relief under the local state workmen's compensation act.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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